IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

WEDNESDAY, THE SIXTEENTH DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE SRI DEVINDER GUPTA, THE CHIEF JUSTICE

and
THE HON'BLE SRI JUSTICE B.SESHASAYANA REDDY

WRIT APPEAL No. 323 of 2005

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 20/01/2005 in WP No. 24856 OF 2004 on the file of the High Court.)

Between:

1. M/s. Samatha Co-operative, Housing Society Ltd. (Regd. No. 687 T.T.) represented by its President, P. Chakrapani, S/o. Late P. Buchi Narasaiah, R/o. H.No. 20-8-17, Fort Road, Warangal, Warangal District.
2. R. Kalidas, S/o. Chandramouli,
R/o. 15-4-48, Plot No. 58/B, Rammanapet, Warangal.

..... APPELLANTS

AND

1. The District Collector, Warangal, Warangal District.
2. The Revenue Divisional Officer, Warangal, Warangal District.
3. The Mandal Revenue Officer, Hanumakonda Mandal, Warangal District.
4. The Superintendent of Police, Warangal, Warangal District.
5. NTR Nagar Karmika Samkshema Sangam, Enumamula, Warangal, Warangal District, represented by its President, Arsam Swamy

.....RESPONDENTS

Counsel for the Appellant: Mr.V.HARI HARAN

Counsel for the Respondent Nos.1 to 4: GP FOR REVENUE

Counsel for Respondent No.5: -------

The Court at the admission stage made the following :

ORAL JUDGMENT:

(per Honourable Sri Devinder Gupta, the Chief Justice)

The grievance of the appellants is to the order passed by the learned Single Judge dismissing the writ petition and observing that the only course open for the appellants is to seek eviction of the 5th respondent by availing the common law remedy and no exception can be taken in that regard to the order dated: 25.6.2001 passed by the Revenue Divisional Officer.

Writ Petition No.24856 of 2004 was filed by the appellant in order to seek implementation of the order dated: 25.6.2001 passed by the Revenue Divisional Officer, thereby, praying that the respondents be directed to ensure that illegal huts constructed by Respondent No.5 in the land of the appellants in Survey Nos. 166/A, 168/A and 169/A, situated at Enumamula village, Warangal District are removed.

We have heard the learned counsel for the appellants and do not find any ground to interfere with the ultimate order of the learned Single Judge passed relegating the petitioner-appellants to the remedy of invoking jurisdiction of civil court in seeking eviction of the 5th respondent.

The only basis of the appellants in seeking the relief as prayed in the Writ Petition is the order passed on 25.6.2001 by the Revenue Divisional Officer-cum-Sub-Divisional Magistrate, Warangal. The order reads:

> " Whereas it has been reported by the Mandal Revenue Officer and Executive Magistrate, Hanamkonda vide report No.C1/1176/2001 dated: 29.5.2001 and Sub-Inspector of Police, Intezargunj, Warangal F.I.R. Report No. 36/2001 dated: 1.3.2001 that certain people have occupied and erected huts in patta lands situated at Enumamula (V), bearing Sy. Nos. 166/A, 168/A and 169/A and when the purchasers of the said land tried to evict the huts, the dwellers were reluctant to remove and it is likelihood breach of peach in the vicinity.
>
> Where there is dispute before two parties. Hence, I feel that it is necessary to impose Under Section 145 Cr.P.C. orders to prevent the breach of peach and public tranquility, I hereby direct the Sub-Inspector of Police, Intezargunj, Warangal to see that the huts erected in patta lands said above are removed peacefully."

The aforementioned is the only order passed by the Revenue Divisional Officer. No other proceedings or the orders have been brought to our notice, and, the order read

as such, would reveal that merely on receipt of the report of the Mandal Revenue Officer and the Executive Magistrate, Hanamkonda and Sub-Inspector of Police, Intezargunj, Warangal in F.I.R. No.36/2001 that certain persons occupied and erected huts in patta lands in Sy. Nos. 166/A, 168/A and 169/A and when purchasers of the said land went to the hut dwellers, the hut dwellers were reluctant to vacate, and, therefore, there was likelihood of the breach of peace in the region. On perusal of the reports, the Revenue Divisional Officer proceeded to observe that there was dispute between two parties, and, therefore, he feels it necessary to impose Section 145 Cr.P.C. orders to prevent breach of peace and public tranquility and directed the Sub-Inspector of Police to see that huts are removed peacefully. The order nowhere says that there was any opportunity afforded to the opposite party or that the Revenue Divisional Officer was purporting also to exercise the powers of Sub-Divisional Magistrate, that he followed the procedure laid down in Section 145 Cr.P.C. of hearing the parties, receiving their evidence, and, then taking decision, and, whether any and which of the parties was, on the date of his order passed, in possession of the subject land in dispute. This order of the Magistrate is referable to the order as envisaged in sub-Section (1) of Section 145 Cr.P.C., which in the instant case, in our view, is the order dated: 25.6.2001, but, only in part. After passing of this order, it was incumbent upon the Revenue Divisional Officer to have issued a notice and published the same as envisaged in sub-Section (3) of Section 145 Cr.P.C. and then proceeded to make adjudication. We are informed that this order was challenged by the 5th respondent and was affirmed subsequently. May be that, for one reason or the other, no interference was made with this order, but, today, what the appellants are seeking before us is to issue directions to the authorities to implement this order. This order, in our view, is nothing but a nullity, having been passed by Respondent No.2, without complying the provisions of law and without affording an opportunity of being heard and without making any adjudication as envisaged in law, which is mandatory in nature, and the order cannot be got implemented as sought by the petitioner-appellants.

The appellant-petitioners are private persons, and, in case, they feel that their property had been encroached upon, the only remedy available to them is to seek eviction of the encroachers strictly in accordance with law and the learned Single Judge, to that extent, was justified in relegating the appellants to the remedy of approaching the Civil Court. The Writ Appeal, therefore, is dismissed. No costs.

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DEVINDER GUPTA, C.J.

16.3.2005.

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B.SESHASAYANA REDDY, J.

VR..

To

1. The District Collector, Warangal, Warangal District.
2. The Revenue Divisional Officer, Warangal, Warangal District.
3. The Mandal Revenue Officer, Hanumakonda Mandal, Warangal District.
4. The Superintendent of Police, Warangal, Warangal District.
5. Two CCs to Government Pleader for Revenue, High Court Buildings, Hyderabad (OUT).

6. 2 CD copies

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